

**Eldan L. (Butch) Reid, A Sole Proprietor, d/b/a B & B Services Electric Co. and International Brotherhood of Electrical Workers, Local No. 611, AFL-CIO. Case 28-CA-13097**

September 26, 1995

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND TRUESDALE

Upon a charge filed by the Union on May 3, 1995, the General Counsel of the National Labor Relations Board issued a complaint on June 16, 1995, against Eldan L. (Butch) Reid, a Sole Proprietor d/b/a B&B Services Electric Co., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 28, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On August 30, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 4, 1995, notified the Respondent that unless an answer were received by August 14, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent has been at all times material a sole proprietorship, existing by virtue of the laws of the State of New Mexico, and has maintained an office and place of business in Albuquerque, New Mexico,

where it is engaged in the business of residential new construction electrical work and radiant heating work. During the 12-month period ending May 3, 1995, the Respondent, in the course and conduct of its operations, purchased and received goods and materials valued in excess of \$50,000 from enterprises located in the State of New Mexico, which enterprises, in turn, purchased and received said goods and materials in interstate commerce directly from points outside the State of New Mexico. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

About November 3, 1994, the Respondent terminated Marlin Spreacker and has failed and refused to reinstate him to his former or substantially equivalent position of employment. The Respondent engaged in this conduct because Spreacker had joined, supported, or assisted the Union, or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

About November 3 and 4, 1994, the Respondent interrogated employees concerning their union membership, sympathies, and activities.

### CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained and coerced, and is continuing to interfere with, restrain and coerce, employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By terminating Marlin Spreacker and failing and refusing to reinstate him the Respondent has also discriminated, and is continuing to discriminate, in regard to the hire, tenure, or other terms and conditions of employment of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by terminating Marlin Spreacker and failing and refusing to reinstate him, we

shall order the Respondent to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify Spreacker in writing that this has been done.

#### ORDER

The National Labor Relations Board orders that the Respondent, Eldan L. (Butch) Reid, a Sole Proprietor d/b/a B&B Services Electric Co., Albuquerque, New Mexico, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Terminating employees or failing or refusing to reinstate them to their former or substantially equivalent positions of employment because they join, support, or assist the International Brotherhood of Electrical Workers, Local No. 611, AFL-CIO, or engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or in order to discourage employees from engaging in such activities or other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

(b) Interrogating employees concerning their union membership, sympathies, and activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Marlin Spreacker immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole, with interest, in the manner set forth in the remedy section of this decision.

(b) Expunge from its files any and all references to the unlawful discharge of Marlin Spreacker and notify him in writing that this has been done.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Albuquerque, New Mexico, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT terminate employees or fail or refuse to reinstate them to their former or substantially equivalent positions of employment because they join, support, or assist the International Brotherhood of Electrical Workers, Local No. 611, AFL-CIO, or engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or in order to discourage employees from engaging in such activities or other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

WE WILL NOT interrogate employees concerning their union membership, sympathies, or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Marlin Spreacker immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and WE WILL make him whole, with interest, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL expunge from our files any and all references to the unlawful discharge of Marlin Spreacker and notify him in writing that this has been done.

ELDAN L. (BUTCH) REID, A SOLE PROPRIETOR D/B/A B&B SERVICES ELECTRIC CO.